

Introduction

[Updated December 2003]

The *Internet Guide to the Idaho Courts* is an electronic companion to the hard-copy *Media Guide to the Idaho Courts*. Both *Guides* are designed to provide a quick source of basic information for journalists covering the Idaho court system. The *Internet Guide* contains links to numerous relevant laws and rules, as well as to other Internet sources of legal information. Topics in the *Internet Guide* are in the same order as topics in the *Media Guide*. (NOTE: The *Internet Guide* was updated December 2003; however, the hard-copy *Media Guide to the Idaho Courts*, published in November 2000, has not yet been reprinted.)

If at any time you do not know the meaning of a legal term used below, you can check the definition by clicking on "Law Dictionary" at <http://law.com>. There also is a [glossary](#) at the end of this *Guide*, and a brief list of legal "jargon" terms and their definitions.

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Idaho's Judicial Structure

The [Supreme Court](#), the state's top appellate court, includes the Chief Justice and four other justices. You may link to specific information about Idaho's justices and judges on the Court's web site at <http://www.state.id.us/judicial>. Computer users with Acrobat Reader installed can access the "[Supreme Court of Idaho Internal Rules Text](#)," a detailed description of the operation of the court. The Supreme Court employs an Administrative Director of the Courts, supervised by the Chief Justice, whose duties include acting as the public information officer for the Court.

The Supreme Court and the Court of Appeals hear appeals from District Courts and from the Idaho Public Utilities Commission and the Industrial Commission. The **Court of Appeals** hears cases assigned by the Supreme Court except capital murder convictions and appeals from the Public Utilities Commission or Industrial Commission. This Court includes a chief judge and two other judges. You may link to specific information about the Court of Appeals judges at <http://www2.state.id.us/judicial/caopins.htm>.

Idaho is divided into **seven judicial districts**, each with an **Administrative Judge** chosen by the other judges in the district. *See* chapter one of "[Overview of the Idaho Court System](#)," for a judicial district map, a chart of the judicial structure, and for more information about the state's judicial districts, including telephone numbers of Idaho Courts.

Each county has a **District Court**, which includes a **Magistrate Division**. There are 39 district judges and 83 magistrate judges in the state. District judges hear felony criminal cases and civil actions if the amount involved is more than \$10,000, and appeals of decisions of the Magistrate Division. Each district judge employs a **Court Reporter** who is responsible for capturing the record of proceedings in that judge's court. *See* <http://www2.state.id.us/judicial/district.htm> to link to the web sites of several of Idaho's district courts. *See also* a statewide [County Courthouse Directory](#), including addresses and telephone numbers.

The **Magistrate Division** hears probate matters, divorce proceedings, juvenile proceedings, initial felony proceedings through the preliminary hearing, criminal misdemeanors, infractions, civil cases when the amount in dispute does not exceed \$10,000, and cases in **Small Claims Court**, established for disputes of \$4,000 or less. *See* chapter two of "[Overview of the Idaho Court System](#)," for more information about the operation of Idaho's district courts and magistrate divisions.

Each judicial district employs a **Trial Court Administrator**, supervised by the administrative district judge and the Administrative Director of the Courts. The Trial Court Administrator helps to manage the district court operations, and often handles media contacts with court personnel and judges. *See* chapter three of "[Overview of the Idaho Court System](#)," for more information about the work of Trial Court Administrators.

The elected **Clerk of the District Court** (the "county clerk") is an important link between the judiciary and county government. District court clerks and their deputies provide crucial services to district magistrates and judges. One important role of the elected clerk is to serve as one of the county's jury commissioners, a group responsible for managing the jury selection process under supervision of the court. *See* [Idaho Code § 2-205](#) and [Idaho Code § 2-207](#) for more information on the jury commission and its operation.

The **County Prosecutor** is responsible for charging and prosecuting crimes and usually serves as the attorney for the county commission in civil matters. The county prosecutor handles all felony prosecutions. **City Attorneys** similarly handle city criminal and civil matters. **Public Defenders** are appointed for defendants unable to afford private attorneys.

Courthouse Etiquette for Media

- The presiding judge controls what happens in the courtroom. Ask a court clerk or bailiff if the court has a written list of rules for the media.
- Judges are bound by the [*Code of Judicial Conduct*](#), and generally cannot comment on any ongoing or pending case in any court. This rule extends to court personnel under the judge's control--for example, clerks, bailiffs, reporters, law clerks, and probation officers.
- Judges explain their reasons for handing down a particular punishment when the defendant is sentenced. If you have procedural questions about a judge's ruling, order, or sentence, the judge may be able to answer it for you. The Trial Court Administrator, or other authorized court personnel can provide you with a copy of the order, but cannot, for example, interpret or analyze the judge's decision for you.
- Turn off your beeper or cell phone or put them on "vibrate" mode. Find out ahead of time if you can use a laptop computer in the courtroom, and if you can, where you should sit. Never conduct interviews inside the courtroom while a proceeding is in session.

Special Rules for Cameras, Recording Equipment

The Idaho Supreme Court has adopted [Idaho Court Administrative Rule \(ICAR\) 45](#), for the use of cameras and recording equipment in the courtroom. The presiding judge authorizes and may revoke the use of cameras and other recording equipment at any time without prior notice. The judge's decision cannot be appealed.

Additionally:

- Approval to photograph or broadcast a court proceeding **must be obtained in advance** from the presiding judge. Check with the court to see if a special request form is available. A sample request form is included in the Appendix to this *Guide*.
- Unless the judge specifically allows for more, only one still photographer and one camera operator will be allowed in the courtroom. The media must arrange for pooling their coverage in advance. Be sure that your news organization has made arrangements for pooling before proceeding.
- The judge will indicate where you will sit. Be in position at least 15 minutes before court begins. Don't move around during the proceeding.
- Never photograph or videotape the jury, including during jury selection ("voir dire").
- Photographers may not use artificial lighting, electronic flashes, external motor drives on cameras, or do fast, random shooting.
- The judge will determine where audio equipment is placed. Only one set of microphones for all the media present will be allowed.
- Video or television cameras cannot indicate when they're running.
- Conversations in the courtroom between attorneys and their clients, between attorneys for a client, or between attorneys and the presiding judge at the bench ("sidebars") may not be broadcast.
- Photographs shall not be taken of notes on the counsel's table or of any exhibits, before they are admitted into evidence.
- Sessions in the judge's chambers or the jurors' deliberations may not be recorded or broadcast.
- Special rules apply to appellate courts. Contact the Clerk of the Supreme Court.

Getting Court Records

Idaho Court Administrative Rule 32 (ICAR 32), governs access to judicial records. This is not the same as Idaho's public records law ([I. C. sections 9-337 to 9-342](#)). ICAR 32 covers all court "records," which includes almost everything in the possession of the court or its staff, whether or not it is filed in a case. (*See* Appendix for a sample records request form.)

The Idaho Statewide Trial Court Record System, known as ISTARS, is a computer system used by Idaho's trial courts to assist in the processing of all cases filed at the trial court level. The case file serves as the official court record and includes all documents filed in that case. Open court records are listed on ISTARS. Ask a clerk for assistance in using ISTARS on a public access terminal, if one is available. Remote access to most ISTARS records is planned for the future. A county by county list of public access terminals is included in the appendix.

Open records:

- Minutes
- Orders
- Opinions
- Findings of fact
- Conclusions of law
- Judgments and notices
- Warrants after they have been served and returned
- Records offered or introduced as exhibits in trials or hearings
- Pleadings
- Motions
- Affidavits
- Responses
- Memoranda
- Briefs
- Other records which are not exempt from disclosure by law or rule

Closed records:

- Child Protection Act Proceedings
- Pre-sentence Investigation Reports
- Mental Commitment Case Records
- Records relating to unserved search warrants.
- Records relating to identity of Grand Jurors or Trial Jurors in certain cases
- Adoption Records
- Parental Rights Termination Records
- Domestic Violence Protection Files except orders of the Court
- Records
 - to determine an individual's need for counseling/rehabilitation
 - to determine appropriate custody of minor children
 - to provide the court with a psychological evaluation
 - to assist in assigning an appropriate disposition
- Judicial Work Product or Drafts
- Personnel Records Including Applications for Employment
(Some employment records of a public official are open)
- Computer Programs and related intellectual property records
- State Law Library records linking patrons to materials borrowed
- Grand Jury records
- Records of the Idaho State Bar relating to attorney discipline
- Records relating to judge performance or discipline, unless formal charges are filed with the Supreme Court.

Juror qualification forms and questionnaires
Applications and test scores of persons seeking to be placed on the Supreme Court's roster of persons providing court services

Records whose release would endanger innocents invade privacy, defame, humiliate or ridicule innocent individuals, disclose proprietary business records or trade secrets, or otherwise make public certain private facts.

Juvenile records: Access to Juvenile Correction Act records is governed by [Rule 32 of the Idaho Court Administrative Rules](#). Following the juvenile's admit/deny hearing, case records and files are open unless the court enters an order exempting them from disclosure. If a juvenile is adjudicated guilty of an act that would be a criminal offense if committed by an adult, the name, offense, and disposition of the court are open to the public. However, if the juvenile is found not to have committed the act or the charge is reduced to less than a felony if committed by an adult, the court may close all those case records and documents.

Trial transcripts and recordings: Typewritten transcripts of proceedings are sometimes part of the court record and you may obtain one for the cost of copying. You may request that a typewritten transcript of a proceeding be prepared; however, the cost for this could be significant. You may re-record audio records of a proceeding, but listening to extensive real-time entire proceedings may be less efficient than buying a transcript.

Custodians of court records: Contact the official custodian of a court record, identified below, with your initial request.

<u>Location of Record</u>	<u>Custodian</u>
Supreme Court or Court of Appeals case file	Clerk of the Supreme Court or a deputy clerk designated in writing
Supreme Court or Court of Appeals, but not in a case file	Administrative Director of the Courts or other person designated in writing by the Chief Justice
District court or magistrate division, but not in a case file	Clerk of the District Court or a deputy clerk designated in writing
District court or magistrate division, but not in a case file	Trial Court Administrator of the judicial district, or judge or magistrate designated by the Administrative District Judge
Judicial Council	Executive Director of the Judicial Council.
Idaho State Bar	Executive Director of the Idaho State Bar or other person designated in writing by the Idaho State Bar Commissioners.

Custodian Judges: Custodian judges are those who hear appeals of denials of requests from custodians, and vary depending upon the location of the record requested.

<u>Location of Record</u>	<u>Custodian Judge</u>
Supreme Court or Judicial Council	Chief Justice of the Idaho Supreme Court, or the Vice-Chief Justice in the absence of the Chief Justice
Court of Appeals	Chief Judge of the Court of Appeals, or a Judge of the Court of Appeals designated in writing
District court or magistrate division	The presiding magistrate or judge of that case, or Judge or magistrate designated in writing by the Administrative District Judge
Idaho State Bar	Administrative District Judge of the Fourth Judicial District of the State of Idaho or a district judge designated in writing by the Administrative District Judge

Requesting the court record: A detailed description of the court rules regarding access to records may be found in [Idaho Court Administrative Rule 32](#).

Most requests to see a court record need not be in writing; simply ask the clerk for a record by its case number, or if you do not know that, the case name.

If there is some doubt as to whether the record is available to the public, or if it is not readily available, it's best to put your request in writing. A sample request form is included in the Appendix to this *Guide*.

The custodian has up to three working days to either disclose the record; notify you that it will take more than three days to determine if your request should be granted (in this case the custodian has ten working days to respond); refer the request to the appropriate custodian judge, or deny the request in writing.

If a custodian denies your request, you have the right to appeal to the custodian judge. If the custodian judge also denies access, you can pursue the matter in court under [Idaho Code § 9-343](#).

The Criminal Proceeding

A proceeding is "criminal" when the defendant is alleged to have violated a criminal statute. There are two basic types of crimes: misdemeanors and felonies. An "infraction," such as most speeding tickets, is not technically a crime, but a civil public offense punishable only by a fine of up to \$100 (plus court costs) and no imprisonment. General misdemeanors have a maximum fine of \$300 and incarceration of not in the county jail more than six months. A felony may be punished by imprisonment in a state correctional facility of more than a year or, in some instances, by death (a "capital crime"). See [Idaho Code § 18-111](#) for basic definitions. See also Chapter VI in "[Overview of the Idaho Court System](#)," for more information. The [Idaho Criminal Rules](#) apply to criminal cases. Most of the steps in the process described below apply to felony charges.

- **Pre-Trial**

The police investigation: This first stage of the criminal proceeding often involves the investigation of a crime by law enforcement. This may include the **issuance of a search warrant** by a Magistrate Judge, and/or **interrogation of the defendant** by law enforcement, and may include arrest of the defendant.

Filing the complaint: The complaint describes the formal charge against the defendant and may be signed by a prosecutor or police officer. If the defendant has not already been arrested, the court may order an **arrest warrant** allowing police to take custody of the person charged, or a **summons** requiring the person to appear before the court.

The first appearance in the magistrate division: This is the first time the defendant is before a judge regarding the complaint. Don't confuse first appearance with preliminary hearing or arraignment. The defendant is advised of his or her rights and the judge explains the legal procedure that will be followed in the case. If the defendant cannot afford an attorney, the court will consider whether to appoint one. A defendant charged with a felony may not enter a plea at this stage of the process, but if this is a misdemeanor case, the first appearance is combined with the **arraignment**, where the defendant must enter a plea. If this is a felony case, at the first appearance the defendant is entitled to a **preliminary hearing** unless the defendant waives this later proceeding, when the prosecutor must show there is probable cause to believe a crime has been committed and the defendant committed it. At this stage bond will be addressed if the defendant is incarcerated.

Bail bond: Bond will be addressed at any time if the defendant is incarcerated.

The preliminary (or "probable cause") hearing: At this hearing, the magistrate judge determines if there is probable cause to believe that a felony crime has been committed and that the defendant committed it. If so, the defendant is "bound over," that is, the case is sent to district court for arraignment and other future proceedings. If the prosecutor fails to make an adequate showing at the preliminary hearing, the Magistrate Judge may dismiss the case or the charge may be reduced to a less serious offense.

The arraignment in a felony case: This proceeding is held before a district judge. The defendant is again advised of his or her rights and the procedures the court will follow, and enters a plea. At this stage, the court may again consider bond. If the defendant pleads not guilty or remains silent, the case will be set for trial. If the defendant pleads guilty, the judge will order a presentence investigation and set a sentencing date.

The grand jury process: This is an alternative to the process described above, which is authorized in [Idaho Code section 19-1101](#) and the Idaho Constitution.. The grand jury is a panel of citizens called together to hear evidence and decide if criminal charges should be brought by its **indictment** (rather than the prosecutor's complaint). The grand jury has broad investigative powers to gather evidence, and can call witnesses and compel them to testify. Grand jury

proceedings are conducted in secret. If the grand jury returns an indictment, the court issues an arrest warrant or summons for the person indicted, and that person appears before the District Court for arraignment and consideration of bail. See [Idaho Criminal Rule 6.5](#) and Chapter XI in "[Overview of the Idaho Court System](#)," for more information.

Pre-trial motions: During the post-arraignment, **pre-trial period**, the judge may consider and rule on any number of motions, often involving whether certain evidence may be introduced. The judge may schedule **pre-trial hearings** to hear attorneys argue the motions. Additionally, a **pre-trial conference** with the judge and the attorneys for both sides will be held to set the ground rules for the trial.

Plea agreements: Most criminal cases do not go to trial. In criminal actions, the prosecutor and the defendant's attorney may come to an agreement about what the defendant will admit to and what the prosecutor will recommend as a sentence. Some plea agreements are informal agreements between the defendant and prosecutor, which do not bind the judge. In plea agreements made pursuant to Idaho Criminal Rule 11, the judge will then hold a hearing to determine whether to accept the agreement. The judge is not bound by the plea agreement, and if the judge doesn't follow it, the defendant may be allowed to withdraw his plea. See ICR 11, found at <http://www2.state.id.us/judicial/rules/crim11.rul>, for more information.

- **The Trial**

Deciding whether to call a jury or hold a court trial before a judge: Generally, unless there is a waiver of the right to a jury trial, a jury will be called. Felony trials are conducted before a twelve-person jury. A six-person jury hears misdemeanors. See [Idaho Criminal Rule 23](#).

Jury selection: This stage begins with **voir dire** (vwor der)--when attorneys for both sides question potential jury members under oath. An attorney may challenge a prospective juror for cause (meaning the attorney has found a demonstrable reason why a person should not serve) or use a "peremptory" challenge, in which case the attorney need not state why this person should not be on the jury. Attorneys will have a certain number of peremptory challenges. See [Idaho Criminal Rule 24](#) for more information.

Opening statements: After the jury has been impaneled, each side has the opportunity to make an opening statement in which the attorneys talk to the jury about what they will hear in the case. A defendant's attorney may choose to wait to give an opening statement until it is the defense's turn to present their case.

Prosecution's case: The prosecution calls its witnesses and questions them--this is **direct examination**--and the defense attorney will **cross-examine** them. Attorneys are not supposed to "lead" their own witnesses; that is, they may not provide answers to the questions they ask. On cross-examination, however, an attorney is allowed to lead the witness.

Throughout the case, **attorneys will make objections** to what the other side attempts to do--the form of questioning, the introduction of certain evidence, for example. The judge may overrule or sustain the objection. "overrule" means the objection is not correct under the law. "Sustain" means the judge agrees that the objection is correct under the rules of the law.

Defendant's case: The defense attorney may begin with an opening statement if one has not already been given. After both sides have questioned the defendant's witnesses, the defense rests.

Rebuttal witnesses: At this time attorneys may call rebuttal witnesses, to explain or contradict testimony that previously has been heard.

The judge instructs the jury: The judge explains the law--what the elements of the crime are--so the jury can apply it to the evidence presented.

Closing arguments: This is the lawyers' last chance to convince jurors to see the evidence their way.

Jury retires and reaches a verdict: When the jury reaches a verdict, the judge, attorneys and defendant come back into the courtroom to hear it read. Afterward, upon the request of either counsel, the judge may poll the jury; that is, inquire of each juror individually if this is his or her verdict. Verdicts must be unanimous; if the jury cannot reach a unanimous verdict (a "hung jury"), the judge may declare a mistrial, and the prosecutor will determine whether or not to re-file the case. See [Idaho Criminal Rule 31](#). If the defendant is acquitted, the defendant is released from the custody of the court. If the defendant is convicted, a new part of the process begins.

- **Post-Trial/Guilty Plea:** If a defendant is convicted at trial, the defense attorney may file certain **post-trial motions** asking for reconsideration and/or relief despite the decision of the jury. If these are denied, the **sentencing process** comes into play.

Sentencing hearing: The date for a sentencing hearing is set at the end of the trial--usually from 30 to 60 days after judgment has been rendered by the jury. At the hearing attorneys for both sides may present evidence, testimony, and oral arguments regarding what would be an appropriate sentence. Pursuant to [Idaho Criminal Rule 11](#), the judge need not impose the sentence recommended in any plea agreement. The following documents and statements may be considered at the hearing:

Pre-sentence investigation report: This report is based upon the pre-sentence investigator's interviews of the defendant and other individuals who know the defendant. It includes a social history of the defendant including education, employment, family situation, physical and mental health and community ties. The report also describes the defendant's prior criminal record, the defendants' version of the crime, and police and other witnesses' versions. The prosecution and defense typically have access to the presentence investigator's report, but it is not available to the media or the public. These reports are absolutely confidential and will not be released to anyone except those noted in Idaho Criminal Rule 32 and Idaho Administrative Rule 32. See [Idaho Criminal Rule 32](#), and [Idaho Administrative Rule 32](#), for more information.

Psychosexual evaluation: The judge may order this evaluation of the defendant if the conviction involves certain sex-related crimes. See [Idaho Code section 18-8316](#) for more information. The evaluation assists the judge in arriving at the most appropriate sentence, and must be performed by a board-certified psychiatrist or a licensed master's or doctoral level mental health professional approved by the court. These evaluations also are confidential. See [Idaho Criminal Rule 32](#).

Defendant speaks ("right of allocution"): The judge must allow the defendant the opportunity to speak on his or her own behalf. See [Idaho Criminal Rule 33, \(ICR 33\)](#) for more information.

Victim impact statements: Victims of crime are allowed by the 1994 Victim's Rights Amendment to the [Idaho Constitution \(Article I, Section 22\)](#), and by state law to present a **victim impact statement** at a sentencing hearing. Victims may provide a written or oral statement to the court regarding the impact the crime has had upon them, but they are not to recommend punishment for the crime in a capital case.

Judge pronounces sentence: Most sentences are pronounced at the end of the sentencing hearing; however, judges may release their decisions at a later time.

- **Possible Sentences**

Fine: A monetary amount based on the relevant statute may be assessed, as well as restitution and court costs.

Withheld Judgment: No judgment of conviction is entered. If the defendant successfully completes the probationary period, complying with the conditions ordered by the judge, the case may be dismissed.

Suspended Sentence: The judge enters a judgment of conviction and imposes a sentence but does not send the defendant to prison for the imposed term. Instead, all or part of the incarceration term is suspended, usually in conjunction with a term of probation.

Probation: The judge enters a judgment of conviction and imposes a sentence but puts the defendant on probation under specified conditions, which may include some jail time. If the defendant violates probation the defendant may be ordered to serve out the remainder of the probationary period in incarceration as stated in the original sentence.

Retained Jurisdiction ("rider"): In a felony case, the judge may enter a judgment of conviction and impose sentence, but retain jurisdiction over the defendant for up to 180 days. During this retained jurisdiction, the defendant undergoes two weeks of diagnosis in the state prison system, and if determined not to be dangerous to society, will be sent to the North Idaho Correctional Institution at Cottonwood, Idaho, or other facilities in the state. The defendant may undergo rehabilitation programs and psychiatric testing. At the end of the period the judge will determine whether to suspend the rest of the sentence or release jurisdiction (send defendant to prison).

Prison Term: The judge may forego the above options and simply impose a prison term for the defendant. Law must within the statutory minimum and maximum time prescribe the length of the sentence. Idaho's Unified Sentence statute (known generally as the "Truth in Sentencing Act") requires that the judge specify a minimum period of confinement, which is not subject to parole. *See [Idaho Statutes 19-2513](#)*. Whether the defendant will serve "concurrent" or "consecutive" sentences becomes an issue if the defendant already is under sentence, or has been found guilty of multiple offenses. If the defendant is sentenced to two or more concurrent sentences, they will run at the same time; the defendant will not serve more than the longest of those. If ordered to serve consecutive sentences, the terms are cumulative; the defendant will not begin to serve the later one until the earlier one has been completed or paroled. The sentence may be "fixed" for a time certain, or for an "indeterminate" period of not less than nor more than specified times. The defendant may be considered for parole during the indeterminate period. The [Idaho Department of Corrections](#) operates several facilities throughout the state.

Death Penalty: First degree murder and first degree kidnapping are "capital offenses"--that is, they carry a possible death penalty in Idaho. Presently, state statutes provide that the judge decides whether death or life imprisonment will be imposed, and the jury only decides guilt or innocence. However, the U.S. Supreme Court has ruled that only a jury can impose the death penalty. It is expected that the next session of the Idaho Legislature will address this conflict. After the verdict of guilty or guilty plea, the judge holds a hearing on the aggravating and mitigating circumstances surrounding the murder. There are a number of legal procedures available to a defendant who has been given the death penalty, including at least one appeal. See "High Interest Proceedings," for more detail on this process.

- **Post Sentencing/Incarceration**

Post conviction process in the district court: Following sentencing, the defendant may file a motion for a new trial under [Idaho Criminal Rule 34](#), or to reduce the sentence under [ICR 35](#). A motion for a new trial based on newly discovered evidence may be made within two years after the final judgment; a motion based on any other reason generally must be made within 14 days after the imposition of sentence. A motion for a reduced sentence must be filed within 120 days of the entry of the judgment imposing sentence. A motion to correct an illegal sentence may be made at any time.

Appeals: Decisions in District Court are appealed to the Supreme Court, and except in capital cases, the Supreme Court may assign that case to the Court of Appeals. The Supreme Court may hear Appeals of the Court of Appeals decisions, or may decline to grant review. Most often decisions of the Court of Appeals are final. *See "The Appellate Process,"* for more information.

Parole: When sentencing a defendant to prison, the judge must indicate what the minimum and maximum term of confinement will be; the defendant generally is not eligible for parole (a conditional release from prison) until the minimum term has been served. (See discussion of "The Truth in Sentencing Act," and "Prison Term".) A prisoner eligible for parole may petition the State Commission of Pardons and Parole, which meets at least four times a year to consider inmates' applications. The Commission must publish notice of its meetings, and include the names of all persons applying for pardon or parole.

Parole/Probation Violations Procedure: A parolee or probationer may be immediately arrested and detained in the county jail if there is cause to believe that the parolee/probationer has violated the conditions of parole. See [Idaho Statute 20-227](#). For parolees, a parole revocation hearing must be held before one or more members of the Commission, or its hearing officer, to determine whether to revoke parole. See [Idaho Statute 20-229](#). If the Commission member(s) or hearing officer determines that parole has been violated, the entire Commission executes an order of parole revocation. See [Idaho Statute 20-229B](#). Probationers alleged to have violated a condition of probation will be subject to a probation violation hearing in the district court, at which time the court may impose any sentence which originally might have been imposed at the time of conviction. See [Idaho Statute 20-222](#).

Sexual Offender Registration Requirement: Convicted sex offenders, including juveniles, allowed to return to the community must register with the county sheriff's office where they live. This registration applies to sex offenders who have been incarcerated or received a suspended sentence and probation or even a withheld judgment. Failure to register is a felony for an adult offender, with penalties of up to five years in prison and a fine of \$5,000. A juvenile offender is subject to a misdemeanor for failing to register; additionally, the juvenile's parent or guardian is subject to a misdemeanor offense for failure to supervise a child, which carries a fine of up to \$1,000. See *Idaho Code* sections [18-8302](#) *et seq.* [18-8407](#), and *Idaho Code* section [18-8409](#), *et seq.* for more information about this process and about accessing sexual offender registration information.

Civil Proceedings

A civil proceeding involves disputes between private parties, or between a private party and a public agency, and could be a dispute over a contract, a lease, a divorce, or because one of the parties is alleged to have wrongfully injured the other (this type of lawsuit is called a "tort"). Usually a person filing a civil suit wants money damages, but he may ask the court to order the other party to do something or stop doing something or stop doing something; this is known as "injunctive relief." See Chapter V in "[Overview of the Idaho Court System](#)" for more information. The [Idaho Rules of Civil Procedure](#), apply to these cases. The process in a civil suit follows this order:

Complaint filed: The filing of a complaint details the facts of the situation as seen by the plaintiff, the person desiring the court's assistance. When the complaint and **summons** (notifying the defendant of the suit) have been filed with the court, copies of these documents must be delivered (**served on**) the other party.

Answer: The defendant has 20 days after being served to respond in writing to the complaint--this is called the "answer." The defendant may, at the same time, file a **counterclaim** as part of the answer. The counterclaim describes why the defendant feels entitled to relief (money or an injunction) from the plaintiff. The plaintiff then has 20 days to file an answer to the counterclaim. If either side does not file answers or other pleadings in the time period required, the other party may ask the court for a **default judgment** in which the judge decides the case in favor of that party. Time limits may be extended by an agreement of the parties (a **stipulation**) or for other reasons approved by the court.

Pre-trial discovery and motions: In the period between filing the initial papers and the trial, the parties probably are negotiating to determine if they can settle their dispute while, at the same time, conducting **discovery** (a proceeding in which the parties request and are given information about the case known by the other side). Discovery includes submitting written questions for the other side to answer (**interrogatories**), conducting oral questioning of sworn witnesses (**depositions**), and requesting the production of documents and other things related to the case. Either side may also make pre-trial motions regarding what may be presented at trial. In the pre-trial phase, attorneys often file motions for **summary judgment**, which if granted will eliminate the need for a trial. To win on a summary judgment motion, a party must show that there are no material issues of fact in dispute and that the case can be decided by the judge as a matter of law.

Pre-trial hearing and trial: If it appears the case will not settle, the judge will hold a pre-trial hearing to determine the conduct of the trial. The conduct of a civil trial follows essentially the same order as a criminal trial, discussed above. When either the judge or jury renders its decision, the case may be appealed by the losing party.

Mediation: The court may appoint, or the parties may agree to, a neutral mediator who assists them in reaching a mutually acceptable agreement. All civil cases are eligible for referral to mediation. See [I.R.C.P. 16\(k\)](#).

Out of court settlement: If the parties come to an agreement about settling the case, they may present their agreement to the judge, who, as part of the settlement, may order the record of the case sealed.

Juvenile Proceedings

Juvenile proceedings exist for persons under the age of 18 who violate any federal, state, or local law, with the exception of certain alcohol, tobacco, most traffic and watercraft violations. The [Idaho Juvenile Corrections Act, Idaho Code section 20-501](#), governs a juvenile case. *See also* [Idaho Juvenile Rules](#), adopted by the Supreme Court. A juvenile may also be tried as an adult in certain very serious crimes, as described below. The magistrate judge handles juvenile cases. The process is generally as follows:

- **Report of a wrongdoing; the filing of a petition:** An officer who believes that a juvenile has broken the law files a report concerning the alleged offense. If it is determined that further action is needed, the report is submitted to the prosecuting attorney, requesting that a petition be filed with the juvenile court. A petition is the formal document that describes the specific act the juvenile is alleged to have committed. Unless such a petition is filed, the juvenile may not be brought before the court except to be released from detention.
- **Probation officer's interview and recommendation:** If the prosecutor chooses to file a petition, the Court makes a preliminary investigation to determine whether further action shall be taken. The juvenile's probation officer then may recommend that the case be dismissed or that the juvenile be diverted into a community program. The judge may accept or reject the recommendation. "Diversion" efforts address the problem through non-legal processes such as counseling and special youth programs, and may occur informally whether or not a petition is filed.
- **The admit/deny hearing:** The initial admit/deny court hearing in a juvenile proceeding is never open to the press or the public. Usually only the judge, the in-court clerk, probation officer, the juvenile, parents and attorneys are admitted, but other persons who have an interest in the case may also attend with the judge's permission. The judge reviews the petition, explains the constitutional and legal rights of the parties, and determines whether the facts in the petition are true. If the juvenile denies the charge, the case is set for another hearing. At the admit/deny hearing, the judge decides whether the proceedings will be opened or closed; the proceedings are open unless the court enters an order closing them. Proceedings brought against a juvenile fourteen years or older who is charged with an act that would be a felony if committed by an adult are open to the public unless the judge orders that "extraordinary circumstances" justify closing the proceedings.
- **The disposition and alternatives:** If the juvenile admits the act or is found by the court to have committed it, the court proceeds to make a disposition. This disposition of the case may order one or more of several alternative possible actions: the juvenile may be ordered into counseling, after which the case will be dismissed, a juvenile may be ordered to make restitution, a juvenile may be ordered into treatment, or probation; or committed to a juvenile detention facility for a period of 90 days or less; or committed to the Department of Juvenile Corrections, which could place a juvenile in a Juvenile Corrections Center; or in some cases, the state Mental Hospital. In felony cases the juvenile court may transfer the case to district court to be processed under adult criminal law. Generally the juvenile must be at least fourteen years old to be tried as an adult, although younger juveniles may be transferred if certain conditions exist. Idaho law also contains provisions for the parents of juvenile offenders to provide reimbursement for the costs of their child's offense. *See* [Idaho Statute 20-524](#).

High-Interest Proceedings

- **Covering High-Interest Proceedings – Lessons Learned from Other States***

1. Whatever method the judge ultimately chooses for dealing with the media, the most important thing to remember is to be comfortable with that method.
2. Establish an effective communication method between the court and the media about the basic procedural and legal aspects of the proceedings.
3. No matter who is assigned to deal with any particular problem, the judge will ultimately be held responsible for what happens, particularly when things go wrong. The trial judge must, therefore, think through each decision or problem before acting.
4. The judge must also be aware that he or she will be the direct focus of much of the media's attention.
5. The judge, court administrative staff, and media liaison should plan for all foreseeable contingencies in dealing with the media and the public. Well in advance of the trial, the judge should meet with key staff (the court administrator, jury administrator, sheriff, police), counsel for the parties, and news media representatives to resolve as many media concerns as possible.
6. The trial judge and court administrative staff should treat all members of the media equally and fairly and ensure each media representative the same degree of access as every other media representative.
7. The judge should be careful to avoid the charge of favoritism by not appearing excessively friendly with individual members of the media.
8. Before the trial begins, the judge should establish in writing explicit, clear, and fair ground rules for the media regarding trial procedures and access to proceedings and trial participants.
9. The court should make reasonable efforts to accommodate the media's needs and provide them with the essential information they require to do their job. The judge should ensure that members of the media obtain timely responses to their questions. Information concerning the court's schedule, timing of decisions, and other procedural matters should be provided daily.
10. There should be a single, reliable source of information for all of the media.
11. Anyone who communicates with the media on behalf of the judge should have the judge's full confidence and support. This person should not continually have to seek authority before speaking or acting. This persons should be fully informed about all matters communicated to the media.
12. To the extent reasonably possible, the judge should avoid making rulings from the bench that can be misconstrued or taken out of context in media reports.
13. The trial judge should be careful not to say or do anything that would generate additional publicity or cause him or her to become the focus of personal attention. Choice of words and demeanor are very important.
14. The judge should avoid the appearance of unnecessarily withholding information or excluding the media from proceedings by keeping them informed and providing the reasons for the court's actions. All hearings, including pretrial hearings, should be conducted in court, rather than by telephone. Frequent side-bar and *in camera* discussions should be avoided, if at all possible.
15. The court should provide a separate media room (off-site, if possible) in which telephone lines and video feeds can be set up for the media. The costs of leasing any facilities, or making any technological arrangements or modifications for the media, should be borne by the media representatives making the request.

16. The trial judge should be aware of increased pressures on the courtroom staff caused by the intense public interest and media focus on the proceedings. If possible, court and trial staff should be trained in dealing with the media and the public for notorious cases.

* taken from "Managing Notorious Trials" by Timothy R. Murphy, Paula L. Hannaford, Geneva Kay Loveland, and G. Thomas Munsterman / National Center for State Courts

- **Child Abuse Cases:** Two systems deal with child abuse--the child protection system of the Idaho Department of Health and Welfare, which operates pursuant to the [Child Protective Act \(Idaho Code sections 16-1601 to 16-1637\)](#), and the criminal justice system, which prosecutes people accused of crimes involving child abuse. The Child Protective Act focuses on the protection of endangered children but encourages the preservation of family unity and privacy if possible. A child may be removed from the home and placed in foster care or some other setting or the alleged offender may be removed from the home.

The Child Protective Act: Under Idaho law (See [Idaho Statute 16-1619](#)), most people are required to report suspected child abuse, neglect or abandonment to the Department of Health and Welfare. When the Department receives information that a child is being or has been abused, neglected or abandoned, it is required to investigate the report. A child may be removed from the home without a court order only by a police officer that determines that the child is in immediate danger if allowed to stay there.

A shelter care hearing must be scheduled within 48 hours of the child's removal, or 24 hours of the alleged offender's removal. At the hearing, the court will determine whether the child should remain in (the care of the state) or be allowed to return home, or if the alleged offender may return home. If the court allows the state to retain custody of the child or refuses to allow the alleged offender to return home, the judge will order a full adjudication hearing to determine if the child needs protection.

The court may appoint a guardian ad litem for the child, that is, a trained volunteer who will act as a special advocate for the child during the proceedings. At the adjudication hearing, the judge will determine a more permanent plan for the child, which may include remaining in foster care, returning to the home under certain conditions, or returning home with no restrictions.

In certain cases, the Department may ask the court to legally terminate the parent-child relationship. Termination is a separate action that frees the child for adoption if approved by the court.

All CPA proceedings are confidential and exempt from disclosure by Idaho Court Administrative Rule 32(d)(7). The judge may allow a friend, counselor, or supporter of the child to remain in court during the proceeding, particularly when the child testifies.

The Criminal Justice System: Idaho's laws concerning child abuse generally are found in [Title 18 of the Idaho Code](#), along with other crimes. The county prosecutor may become involved in a case after receiving a report from the Department of Health and Welfare or local law enforcement. If the prosecutor decides to prosecute the alleged offender, the proceeding follows essentially the same course as outlined above for criminal proceedings. The issue of taking child testimony, however, makes these cases somewhat different from adult-on-adult crime prosecutions. Idaho law allows a child to testify via closed-circuit television or the child may have a friend with him or her when giving testimony. See [Idaho Code section 19-3024A](#).

The judge may also, as a matter of discretion, order the courtroom closed to the public during a child's testimony.

- **Domestic Violence Cases:** "Domestic violence," is a term used generally to describe an act of violence perpetrated by one member of a household on another. Idaho's criminal code provides for prosecution of, for example, assault, battery, rape, murder, domestic battery, or the attempt of such a crime. But the state justice system has developed a more immediate response to domestic violence in the form of a "protection order" aimed at restraining the activities of the alleged perpetrator.

The "Domestic Violence Crime Prevention Act," beginning at [Idaho Code, section 39-6301](#), provides a way for victims of domestic violence to obtain a protection order from the court to exclude the perpetrator from the house, require the perpetrator to get counseling, or restrain the perpetrator from places where the victim may be. A petition for a protection order is filed with the local District Court. A temporary (14-day) protection order may be obtained almost at once with an ex-parte hearing (the alleged perpetrator need not be at this hearing) if the judge is convinced that "irreparable injury" could otherwise occur. A full hearing including both parties must be held within the fourteen days to determine if there is cause for the court to issue a 90-day protection order. This order is subject to one-year renewals. See the [Idaho Council on Domestic Violence and Victim Assistance site](#). If the person being restrained by the protection order violates it, he or she is subject to a fine of not to exceed \$5,000 and up to one year in jail.

- **Capital Crimes:** First degree murder and first degree kidnapping are crimes that carry the death penalty as a possible punishment. If the prosecutor intends to seek the death penalty, he must file a written notice of intent to do so with the District Court within thirty days after the defendant has entered a plea. See [Idaho Code section 18-4004A](#). There also are special requirements for court-appointed attorneys in death penalty cases. (See [Idaho Criminal Rule 44.3](#).)

Idaho law requires that the death penalty cannot be imposed unless the Court finds at least one aggravating circumstance attending the crime. These are described in [Idaho Code section 19-2515](#), and include a previous conviction for murder, multiple murders at the same time, knowingly creating a great risk of death to many persons in the commission of the murder, murder for hire, and an "especially heinous, atrocious or cruel" murder. The Court must hold a hearing during which attorneys for the state and defendant present evidence regarding aggravating and mitigating circumstances.

When a judge sentences a defendant to death, a number of requirements automatically come into play. The sentencing court must provide a written report on its action and file it with the state Supreme Court. The sentence is stayed pending appeals and reviews, and the District Court must immediately appoint an attorney other than the lawyer who represented the defendant before the death penalty was imposed, for the purpose of seeking post-conviction relief from the court.

Under Idaho law ([I.C. section 19-2827](#)), the state Supreme Court automatically reviews the imposition of the death penalty in a District Court case. The court must consider whether the sentence was lawfully imposed (for example, whether the evidence supports the judge's finding that an aggravating circumstance warranting the death penalty was present in the commission of the crime). Attorneys for the defendant and the state may submit briefs on the issue and present oral arguments before the court. The court may affirm the sentence or set it aside and remand the case for re-sentencing by the trial judge. Additional appeals to the Idaho and United States Supreme Courts may be made, and as a last resort, the governor of the state may be petitioned to delay or halt the death penalty process.

The death penalty in Idaho is by law administered by lethal injection. See [Idaho Code section 19-2716](#).

- **The Snake River Basin Adjudication:** The [Snake River Basin Adjudication Court](#) (SRBA) a special district court in Twin Falls was created by the Idaho Legislature to allocate all water rights in the Snake River Basin. The workload is extensive, as thousands of water rights claims have been filed there. The SRBA court has its own web site: <http://www.srba.state.id.us/>.

The Appellate Process

In Idaho all appellate cases come to the Idaho Supreme Court, which at its discretion assigns a number of these to the Idaho Court of Appeals. The Supreme Court must hear appeals from the Idaho Public Utilities Commission, the Industrial Commission, and all death penalty case appeals. The Idaho Supreme Court hears disciplinary actions involving attorneys, and writs when filed directly with the Supreme Court. A writ is a legal order to do or not do something, i.e., a *writ of mandamus, prohibition, or habeas corpus*. The appellate process is governed by the [Idaho Appellate Rules \(IAR\)](#). The parties in an appellate case are designated as the **appellant** and the **respondent**.

In most cases an attorney must **file a notice of appeal** within 42 days of the official filing of the disputed judgment, order or decree, or in criminal cases, 42 days from entry of the judgment, which may be enlarged if the court retains jurisdiction or places the defendant on probation. In death penalty cases, the time for filing a notice of appeal does not begin until the death warrant is signed and filed by the district court. See [I.A.R. 14](#) for more information.

The District Court provides the appellate court with a **record of the proceeding below**, as designated by the parties, who then **submit written briefs** detailing their arguments. Most appeals are heard in Boise, but both appellate courts travel to other cities throughout the state. A schedule and summary of the cases to be heard by both the Supreme Court and Idaho Court of Appeals can be found at <http://www2.state.id.us/judicial/>. In **oral argument**, each party is allowed 30 minutes for its presentation. The Justices may ask questions of the speaker at any time during oral argument. After hearing arguments, the appellate court will **issue its written opinion**, usually within a few months. Most appellate decisions are published in *Idaho Reports*, the official record of Idaho appellate cases, and also can be found at <http://www2.state.id.us/judicial/>. Depending on the nature of the case, the decision may be appealed to the U.S. Supreme Court.

Judicial Selection and Election

The Supreme Court: Five justices serve on the Supreme Court. They are elected at large, on a nonpartisan ballot, for a term of six years with their terms being staggered so continuity on the Court will be maintained. A candidate for justice must be a qualified elector and a duly qualified attorney-at-law. [Reference: [Idaho Constitution, Article V, Section 6](#); [Idaho Constitution, Article V, Section 7](#); [Idaho Revised Code § 34-905](#); [Idaho Code § 34-615\(2\)](#).]

The Supreme Court is the state's court of last resort. The Court hears appeals from final decisions of the district courts, as well as from orders of the Public Utilities Commission and the Industrial Accident Commission. It has original jurisdiction to hear claims against the state, and to issue writs of review, mandamus, prohibition and habeas corpus, and all writs necessary for complete exercise of its appellate jurisdiction. The Court may also review decisions of the Court of Appeals, upon petition of the parties or upon its own motion. [Reference: [Idaho Constitution, Article V, Section 9](#); [Idaho Code § 1-2409](#).]

When there is a vacancy during the term of office, the Idaho Judicial Council advertises to all attorneys licensed to practice law in the state of Idaho the existence of the vacancy and solicits applications for the position. After the applications are received, a survey is circulated to all members of the Bar, soliciting their opinions about the applicants. Notice is also given to the general public, inviting them to comment on the applicants as well. The results of the survey are compiled and are used by members of the Judicial Council when they interview the candidates. The Judicial Council considers the integrity and moral courage of the candidates, legal ability and experience, wisdom, intelligence, capacity to be fair-minded and deliberate, industriousness and promptness in performing duties, compatibility of personal habits and outside activities with judicial offices, capacity to be courteous and considerate on the bench, and legal research and writing abilities. At the conclusion of the interview process, the Judicial Council submits to the Governor the names of not less than two nor more than four qualified persons. The Governor then appoints the Justice to fill the remainder of the elected term. Thereafter, the Justices stand for popular election on a non-partisan ballot. [Reference: [Idaho Code § 1-2102](#).]

A qualified lawyer may challenge a sitting Justice at election time. Elections for Justices are held during the May primary election. The Canons of Judicial Ethics guide judges and candidates during elections. Canon 5 of the [Idaho Code of Judicial Conduct](#) requires that a judge or judicial candidate refrain from inappropriate political activity, and maintain the dignity appropriate to judicial office, and act in a manner consistent with the integrity and independence of the judiciary. The Canon also requires candidates for judicial office to encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as applied to the candidate. All judges and candidates for judicial office shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office. They cannot make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the Court, nor can they knowingly misrepresent the identity, qualifications, present position or other facts concerning the candidate or an appointment. As a corollary, a candidate should emphasize in any public statements the duty to uphold the law, regardless of his or her personal views. See the [Idaho Code of Judicial Conduct](#) for more information regarding the Code of Conduct and its application to candidates seeking appointment to judicial office. [Reference: [Idaho Code § 34-615](#).]

The Court of Appeals has three judges. They too are elected at large, on a non-partisan ballot, for a term of six years, staggered to provide continuity. The description of the election and selection process for Supreme Court Justices also applies to the three judges of the Court of Appeals. [Reference: [Idaho Code of Civil Procedure, § 1-2404](#).]

The Court of Appeals has jurisdiction to hear all cases assigned to it by the Supreme Court. However, the Supreme Court may not assign cases involving claims against any state, extraordinary writs, appeals from the imposition of capital punishment, nor appeals from the Industrial Commission or Public Utilities Commission. While an appellant may petition the Supreme Court to rehear a Court of Appeals decision, the Supreme Court is not required to grant such a petition.

District Judges: Idaho has 39 district court judges, who sit in the 44 counties. They are Idaho attorneys, elected by nonpartisan ballot within the judicial district in which they serve. A district court judge is elected for a four-year term by the electorate of the Judicial District which the judge serves. District Judges stand for election within their judicial districts. A qualified lawyer may challenge a District Judge during the May primary election, on a non-partisan, contested ballot. If a vacancy occurs, the same selection procedures described above apply.

District Judges have jurisdiction over civil and criminal cases. They decide cases involving the most serious criminal cases (felonies), and typically hear civil cases where the amount of money in dispute exceeds \$10,000. Civil damage actions usually involve personal injury such as automobile negligence cases and contractual disputes between parties. District Judges also hear post-conviction relief actions in which a defendant is challenging his or her conviction or incarceration. District Judges also hear appeals from decisions made by magistrate judges.

Magistrate Judges: Idaho has 82 magistrate judges, with at least one judge resident within each county. [Reference: [Idaho Code § 1-2201](#).] A District Magistrates Commission exists in each judicial district, comprised of county commissioners, Mayor, citizens, lawyers, a Magistrate Judge in a non-voting capacity, and chaired by the Administrative District Judge. To fill a vacancy, the District Magistrates Commission interviews eligible applicants and makes an appointment to an initial 18-month term of office. A qualifications questionnaire is mailed to all attorneys, with evaluations compiled for use by the District Magistrates Commission. Just prior to the conclusion of the first 18-months, the Magistrates Commission evaluates the performance of the new Magistrate Judge and may determine that the Judge has successfully completed their probationary period, or they may extend the probationary period, and/or can remove the Magistrate Judge from office. Magistrate Judges stand for a retention election every four years on a non-partisan judicial ballot, where the registered voters are asked whether they wish to retain the Magistrate Judge in office, or not.

Magistrate Judges hear less serious criminal matters known as misdemeanors, and can handle civil cases where the amount of money involved does not exceed \$10,000. Magistrate Judges also hold preliminary hearings to determine whether to bind over and send a defendant to district court for trial on a felony charge. Magistrate Judges may also issue warrants of arrest and search warrants. Magistrate Judges hear habeas corpus proceedings, probate cases (wills and estates), Juvenile Correction Act cases, and domestic relation cases (such as divorce, child support, and child custody). Magistrate Judges also hear small claims cases where less than \$4,000 is in controversy. These cases are heard informally without attorneys being present, or without the involvement of juries.

Access to Jurors

At the conclusion of all jury trials, judges instruct jurors on a number of matters. Among other things, these instructions guide jurors as to whether or not they choose to respond to any media inquiries. The instructions follow:

“You have now completed your duties as jurors in this case, and are discharged with the sincere thanks of this court. The question may arise as to whether you may discuss this case with the attorneys or with anyone else. For your guidance, the court instructs you that whether you talk to the attorneys, or to anyone else is entirely your own decision. It is proper for you to discuss this case if you wish to, but you are not required to do so and you may choose not to discuss the case with anyone at all. If you choose to talk to someone about this case, you may tell them as much or as little as you like about your deliberations or the facts that influenced your decisions. If anyone persists in discussing the case over your objections or becomes critical of your service, either before or after discussion has begun, you may report it to me.”

Other Resources

- **What to do if you are denied access to court proceedings**

The U.S. Supreme Court has held that a judge considering closing a judicial proceeding must follow certain procedures to ensure that closing the proceeding will not infringe upon First Amendment rights. See *Press-Enterprise v. Superior Ct.*, 464 U.S. 501 (1984).

The judge must hold a hearing on the need for closure, and allow the media and others to argue against closure. A presumption of disclosure under the First Amendment right of access requires courts to grant access unless confidentiality is “necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.” Thus, if a compelling interest is at stake (e.g., criminal defendant’s fair trial right) the judge must consider alternatives to court closure (e.g., change of venue, sequestering the jury, postponing the trial until the effects of publicity have diminished). A judge who determines that no alternative will work must also determine that closure will protect the party’s interest and must tailor the closure order to protect that interest without unduly restricting public access. Finally, the judge must present written findings supporting the closure decision in order to allow appellate review.

If a judge orders you to leave a hearing that has so far been public:

1. If you know your news organization is prepared to send a lawyer to argue against closure, politely ask the judge if you may speak for a moment.
2. If allowed, tell the judge that your news organization objects to the closure and would like an opportunity to argue against it. Ask for a brief recess so that your lawyer may come to court to argue your case and ask that your objection be made part of the court record.
3. If not allowed to address the court, do not refuse to leave or shout your objection. Leave the courtroom, write a brief note to the judge explaining that your news organization wants to oppose the closure and that you will contact your editor/lawyer immediately. Ask a court officer to give the note to the judge and get in touch with your superiors immediately.

If you learn that a closed court proceeding is in progress or has already taken place, try to determine:

1. Who sought closure and on what grounds
2. The nature of the proceeding (i.e., criminal, civil, pre-trial, trial, etc.)
3. Whether a hearing was held on the closure order and, if so, what findings the judge made justifying the closed proceeding
4. Whether the proceeding is still going on
5. Consult your editor about challenging the order; challenge may be as simple as requesting a meeting with the judge to point out the procedural requirements mandated by Supreme Court. Be sure to ask for access to future proceedings and transcripts of past proceedings (note: be prepared to pay for past transcripts). If judge does not agree to “informally” resolve issue, you can file a motion to intervene in the matter for purposes of formally challenging the closure order (including a possible appeal).

- **Media and the Courts Conflict Resolution Panel**

A blue-ribbon Media and the Courts Conflict Resolution Panel can be called upon by any member of the media or any judge at any time to resolve significant conflict that might arise among the media and the Idaho courts. This Panel has been established by the Media/Courts Committee to help sort out significant conflicts of courtroom coverage on a case-by-case basis. The Panel can speak with or mediate on behalf of any lawyer, judge, or journalist facing a “free press / fair trial issue.” The Conflict Resolution Panel can readily suggest ways that fair trial concerns can be addressed while preserving public access to the courts.

The following people have agreed to serve on the blue-ribbon Conflict Resolution Panel:

Allen Derr

200 N. 3rd Street, Suite 8, Boise ID 83701
Phone: 208-342-2674 // Fax: 208-342-2676
Email: derrallen@aol.com

Joan Cartan Hansen

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Debora Kristensen

277 N. 6th Street, Suite 200, Boise ID 83701
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Ron Schilling

P.O. Box 1251, Meridian ID 83680-1251
Phone: (208) 898-0338 // Fax: (208) 898-9051
Email: ad resolutions@cableone.net

To convene the Resource Panel, you may contact any one of the members, or you may contact:

Patti Tobias, Administrative Director of the Courts

Phone: 208-334-2246
Email: ptobias@isc.state.id.us

Betsy Russell, Idaho Press Club

Phone: 208-336-2854
Email: bzrussell@rmci.net

- **Complaints Against Judges or Attorneys**

Complaints against Judges: The [Idaho Judicial Council](#) is responsible for handling any complaints against judges. For further information, call (208) 334-5213. The Judicial Council is comprised of three citizen members, two attorneys, one district judge, and the Chief Justice of the Supreme Court.

Upon receiving a written complaint, the Idaho Judicial Council investigates and, upon finding cause, recommends disciplinary action to the Supreme Court. A complaint must be in writing, but may be in letter form. The complaint identifies the judge and specifies the conduct or action believed to be improper. Any names and addresses of witnesses are also included, as well as any documents or correspondence that substantiates the allegations. The letter or complaint must be verified and notarized.

Judicial misconduct is any violation of the Code of Judicial Conduct, which may include but is not limited to the following:

- ☒ failure to perform duties impartially and diligently
- ☒ failure to dispose promptly of the business of the court
- ☒ conflict of interest
- ☒ or conduct prejudicial to the administration of justice that brings the office into disrepute

By statute, complaints and the identity of complainants are confidential. If the Council conducts a preliminary investigation, the judge will receive a copy of the complaint. When a Council recommendation is filed with the Supreme Court, it becomes a public document which can be reviewed in the Supreme Court Clerk's Office. The Supreme Court has disciplinary authority, and reviews any recommendation from the Council for censure, suspension, removal of a judge for misconduct, or retirement of a judge for disability seriously interfering with the performance of judicial duties. The Supreme Court is not required to follow the Council's recommendations.

When a complaint is received by the Judicial Council, it is reviewed to determine that it is within the Council's jurisdiction, and the confidential inquiry or preliminary investigation may be made to verify allegations. The Council carefully reviews all allegations. If an allegation involves legal issues, or for some other reason is not within the Council's jurisdiction, it will be dismissed. When the Council believes it has sufficient evidence to proceed, it will require the filing of a formal complaint and hold a fact-finding hearing. At such a hearing, the judge has the right to defend against the charges and be represented by a lawyer. Witnesses and documents may be subpoenaed. If no violation is found, the complainant will be dismissed. If a violation of the Code of Judicial Conduct is found, or disability which is seriously interfering with the judge's ability to perform judicial duties, the Council may take the following action:

- ☒ recommend a remedial course of action, and require the judge's acquiescence
- ☒ require a personal appearance before the Council
- ☒ recommend that the Supreme Court retire, discipline, or remove the judge

For further information regarding the Judicial Council, go to the [Judicial Council's website](#), where you will find a "Judicial Complaint Form," the Idaho Code of Judicial Conduct, the status of judicial vacancies, the rules of procedure, members of the Idaho Judicial Council, and the Council's current Annual Report.

Complaints against Attorneys: The Idaho State Bar is responsible for handling any complaint against an attorney. For further information, call (208)334-4500, or go to <http://www2.state.id.us/isb/bc/discipline.htm>.

If someone thinks that an attorney has acted unethically, they may file a complaint against him or her with the Bar Counsel's Office of the Idaho State Bar. Bar Counsel's office reviews the complaint to determine whether or not the attorney has violated the Idaho Rules of Professional Conduct and whether or not discipline should be imposed.

The Idaho State Bar is the administrative agency of the judicial branch of the State of Idaho. The membership of the Idaho State Bar consists of all attorneys licensed to practice law in Idaho. The Bar Counsel is the disciplinary counsel to the Idaho State Bar. complaint against an attorney must be submitted in writing, unless prior approval is received in special circumstances. Attorney misconduct is any violation of the Idaho State Bar Rules of Professional Conduct which may include, but is not limited to, the following: improper use of trust account money, conflict of interest, breach of confidentiality, neglect, lack of communication, etc. Ordinarily, a copy of all complaints are forwarded to the attorney, requesting a response.

When a complaint is received, it is reviewed by the Bar Counsel to determine if a violation of the Rules of Professional Conduct has occurred. The Bar Counsel informs the complainant either that (1) the complaint does not appear to involve unethical conduct; (2) more information is needed; or (3) an investigation has been initiated.

Go to ["Program for the Appropriate Response to Criticism of Judges and Courts"](#) for a complete description of the State Bar's program.

A Short List of Internet Resources

- The Idaho Supreme Court Homepage, at <http://www2.state.id.us/judicial>, links to a variety of sources of information, including an overview of the courts, state and federal appellate opinions and information on appeals pending in state courts.
- The Idaho Court Rules page, <http://www2.state.id.us/judicial/rulestxt.htm>, provides a search engine for the Idaho Rules of Civil Procedure, Rules of Evidence, Criminal Rules, and Appellate Rules, among others.
- The Idaho Statutes and Constitution Search Page, <http://www3.state.id.us/> allows a word-search of either the Constitution or Idaho statutes or both.
- The On-Line Catalog of the Idaho State Law Library, <http://www2.state.id.us/lawlib/lawlib.html> allows you to do an author / title / subject / word search of the holdings of the law library.
- The Idaho State Bar and Idaho Law Foundation Homepage, <http://www2.state.id.us/isb/>, includes information about Idaho law-related events, and links to:
 - The Idaho Attorney Roster, http://www2.state.id.us/isb/mem/attorney_roster.asp, a searchable index of the addresses, e-mail addresses, phone numbers, and fax numbers of all attorneys licensed to practice in Idaho.
- ☒ The Idaho Attorney General's "Other Resources" page, <http://www2.state.id.us/ag/>, links to a variety of sources of state and federal laws and regulations.
- ☒ The National Center of State Courts <http://www.ncsconline.org/>
- ☒ The Idaho Press Club <http://www.idahopressclub.org/>
- ☒ The Thomas Homepage, <http://thomas.loc.gov/>, allows you to monitor legislation in Congress, access the Congressional Record, the House and Senate Committee web pages, and link to the Library of Congress, among other sites.
- ☒ The Library of Congress' State and Local Government page, <http://lcweb.loc.gov/global/state/stategov.html> allows you to link to the constitutions and laws of any states, state maps, and a variety of other resources.
- ☒ The Martindale Hubble Lawyer Locator page, <http://lawyers.martindale.com/Executable/Location.php3>, allows you to search for attorneys listed in the Martindale-Hubble directory, a nationwide list.
- ☒ The National Law Journal page, <http://www.nlj.com/>, to view an online edition of this weekly legal publication covering legal news from around the country.
- ☒ <http://www.law.com/> links to a variety of legal resources, including a dictionary of legal terms.

Sample Court Records Request Form

Note: The [attached](#) forms should be printable or downloaded, filled out online and e-mailed to the appropriate court. The following are sample forms only.

PERSON REQUESTING RECORDS _____

ADDRESS _____

PHONE _____ FAX _____ CELL PHONE _____

RECORD REQUESTED OF (COURT) _____

CASE NUMBER _____

CASE NAME _____

SPECIFIC DOCUMENTS REQUESTED

SIGNED

DATE

Cameras in the Courtroom

Sample Forms: Request for Approval/ Judge's Proposed Order

Directions: Fill out the form below, and present both the signed Request for Approval and proposed Order to the presiding judge's office. Click [here](#) to obtain the printable form.

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

_____)	REQUEST TO OBTAIN
PLAINTIFF(S))	APPROVAL TO BROADCAST
)	AND/OR PHOTOGRAPH
)	A COURT PROCEEDING
)	
V.)	
)	
_____)	
DEFENDANT(S))	

I hereby request approval to broadcast and/or photograph the following court proceeding:

Case No.: _____
Date: _____
Time: _____
Location: _____
Presiding Judge: _____

I have read the relevant Idaho rule permitting cameras in the courtroom, and will comply in all respects with the Rules and Order of the Court.

Print Name

Signature

News Organization Represented

Date

ORDER

THE COURT, having considered the above Request for Approval under the Rule permitting cameras in trial courtrooms, hereby orders that permission to broadcast and/or photograph the above hearing is:

Granted; under the following restrictions:

Denied.

DATED this _____ day of _____, _____.

District/Magistrate Judge

Understanding Legal Citations

All reported court decisions may be found in law books called reporters. The reporters have two main divisions: Federal and State. Federal reporters include decisions from the U.S. Supreme Court, the Federal Circuit Courts, the Federal District Courts, and the Bankruptcy Courts.

U.S. Supreme Court decisions are reported in three different reporters: U.S. Reports, Supreme Court Reporter, and Lawyers' Edition (every reported decision may be found in each of these reporters). The U.S. Circuit Courts' decisions are reported in the Federal Reporter. The U.S. District Courts' decisions are reported in the Federal Supplement and in the Federal Rules Decisions. U.S. Bankruptcy decisions are reported in the Bankruptcy Reporter.

State appellate decisions that are reported can be found in the National Reporter System. This System divides the United States into seven regions. To see a map of the National Reporter System, go to <http://www.lawschool.westlaw.com/FederalCourt/NationalReporterPage.asp?site=OA&appflag=39>. Decisions from 48 of the 50 states are reported in these regional reporters while California and New York decisions are only reported in their own state reporters. Some states, including Idaho, have their decisions reported in regional and state reporters.

Every reported decision will have a citation. This citation is used to help one find the case. The common citation format is as follows: Volume, Reporter and Series, Page Number illus. 985 P.2d 1137 The volume number is 985, and it is found on the spine of the book. P refers to the Pacific Reporter and 2d refers to the 2nd Series – both Pacific Reporter and 2d Series will also be found on the book's spine. The page number is 1137.

The federal reporters have the following abbreviations and reporters:

<u>Abbreviation</u>	<u>Reporter</u>
U.S.	U.S. Reports
S.Ct	Supreme Court Reporter
L.Ed	Lawyers' Edition
F., F.2d	Federal Reporter
F.Supp., F.Supp.2d	Federal Supplement
F.R.D.	Federal Rules Decisions

The National Reporter System has the following abbreviations and reporters:

<u>Abbreviation</u>	<u>Reporter</u>
A., A.2d	Atlantic Reporter
N.E., N.E.2d	Northeastern Reporter
N.W., N.W.2d	Northwestern Reporter
P., P.2d, P.3d	Pacific Reporter
S.E., S.E.2d	Southeastern Reporter
So., So.2d	Southern Reporter
S.W., S.W.2d	Southwestern Reporter

Glossary of Legal Jargon

a.l.s. (administrative license suspension) under Idaho Code 18-8002A, a person charged with driving under the influence of alcohol or a controlled substance (*see* below) may have his or her driver's license **automatically suspended in a civil proceeding separate from any criminal prosecution. See Administrative License Suspension.**

d.u.i. (driving under the influence) operating a motor vehicle while under the influence of alcohol or a controlled substance. In Idaho, it is unlawful to operate a vehicle with an alcohol concentration of .08 or above, unless the operator is under 21, when the permissible alcohol concentration level is exceeded at .02.

l and l (lewd and lascivious conduct) the most serious form of child sexual abuse, prohibited by I.C. 15-1808, which provides for a sentence of up to life imprisonment for a convicted offender.

noticed up a process by which one party in a civil or criminal case provides notice to the other party of the time and date of a hearing on a matter which the case involves.

o.s.c. (order to show cause) an order issued by a court, requiring a party to show cause, at an **o.s.c. hearing**, why that party should not be required to do an act or refrain from doing an act.

prelim (preliminary hearing) shorthand for preliminary hearing, *see* definition in glossary of legal terms.

p.c. (probable cause) sufficient reason based upon known facts to believe a crime has been committed or that certain property is connected with a crime. *See* "probable cause" below.

p.c.r. (post conviction relief) following a conviction, an application for relief of the judgment and/or sentence. (*See* Idaho Criminal Rule 57 and Idaho Code 19-4901).

p.v. (probation violation) An act of violating probation which will result in a **p.v. hearing**. *See* "probation violation" below.

rider also known as a "**180-day rider**," this mechanism allows a judge to retain jurisdiction over someone who has been convicted in order to send that individual to a correctional institution (usually at the Department of Correction facility at Cottonwood) for evaluation--this process typically lasts 180 days. At the end of that time, the prisoner is returned to the court where his/her progress is evaluated to determine whether more severe punishment should commence or the original sentence entered by court should be changed. *See* "retained jurisdiction" below.

Rule 35 a reference to Idaho Criminal Rule 35, a provision which allows a court to reduce a sentence within 120 days after the filing of a judgment of conviction or within 120 days after the court releases retained jurisdiction. Under this rule, the court may also reduce a sentence upon revocation of probation or upon motion made within fourteen (14) days after the filing of the order revoking probation. A defendant may file no more than one motion seeking a reduction of sentence under this Rule.

withheld meaning "withheld judgment," this is a criminal disposition in which a judge withholds the judgment of conviction upon conditions deemed appropriate. If the defendant successfully completes the conditions as outlined by the judge, the judge will then dismiss the withheld judgment and the case resulting in the defendant having a clean record.

Glossary of Legal Terms

abstract of record a complete history in short, abbreviated form of the case as found in the record.

administrative license suspension(ALS) a law enforcement officer may seize the driver's license of an individual believed to be driving under the influence. That individual has fourteen days to petition the court to obtain temporary driving privileges until the formal drunk driving case is heard.

alford plea a defendant may affirmatively state that he/she did not commit the offense for which they were charged but fearing more severe penalties if convicted, enters a plea of guilty.

alternative dispute resolution(ADR) a process by which an independent party is asked to review the issues in dispute between two other parties in hopes of bringing the dispute to a resolution before the court is required to conduct a formal hearing or trial. This process may occur prior to the filing of the civil action or may occur after the case is filed. A judge may choose to refer a case for alternative dispute resolution.

amicus curiae a friend of the court; one who interposes and volunteers information upon some matter of law.

arraignment the defendant is advised of the charges against him or her and the rights he or she has. Bail is set. If the charge is a misdemeanor the defendant enters a plea in the Magistrate's Division. If the charge is a felony, the defendant appears first in the Magistrate's Division, but the defendant cannot enter a plea--the defendant determines whether he or she desires a preliminary hearing. If the defendant is bound over on a felony to answer the charge in district court, the defendant enters a plea in the District Court.

arrest of judgment the act of staying the effect of a judgment already entered.

attachment a remedy by which a plaintiff is enabled to acquire possession of property or effects of a defendant for satisfaction of judgment which a plaintiff may obtain in the future.

bail bond an obligation signed by the accused, with sureties, to secure his presence in court. If the defendant fails to appear, the bondsman has a period of time to deliver the defendant to the court. If this is not done, the bond is forfeited.

bail bond forfeiture the process in which the court requires the surety to pay over the amount of bails. Bond.

bail bond exoneration a process by which the bond money paid to the court to ensure an individual's appearance in court is returned to that individual, typically when that person has been found not guilty.

bailiff a court attendant whose duties are to keep order in the courtroom and to have custody of the jury.

banc-(bangk) bench; the place where a court permanently or regularly sits. A "sitting in banc" is a meeting of all the judges of a court, as distinguished from the sitting of a single judge.

bench warrant process issued by the court itself, or "from the bench," for the attachment or arrest of a person.

binding instruction one in which jury is told if they find certain conditions to be true, they must find for the plaintiff, or defendant, as the case may be.

burden of proof the necessity or duty of affirmatively proving a fact or facts in dispute.

caption the caption of a pleading, or other papers connected with a case in court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case, etc.

certiorari-(ser'shi-o-ra'ri) an original writ commanding judges or officers of inferior courts to certify or to return records of proceedings in a cause for judicial review. Proceedings for a writ of certiorari are not applicable in the Idaho judicial system, except as the United States Supreme Court may grant certiorari on a case decided by the Idaho Supreme Court.

change of venue the removal of a case begun in one county or district to another, typically done for the convenience of the parties, or when the news coverage of the circumstances associated with a case make it difficult to find a jury that is not familiar with the facts associated with the case.

Child Protective Act (commonly referred to as CPA) the statutory law dealing with the protection of neglected or abused children.

codicil (kod'i-sil) a supplement to an addition to a will.

common law the body of unwritten principles originally based on the usages and customs of the community which were enforced by the courts. Also called "case law".

concurrent sentence sentences for more than one crime in which the time of each is to be served at the same time, rather than successively

consecutive sentence a sentence, additional to others, imposed at the same time for another offense; one sentence to begin at the expiration of another.

contempt of court any act calculated to embarrass, hinder, or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Contempt is of two kinds: direct and indirect. Direct contempt are those committed in the immediate presence of the court; indirect contempt is the term chiefly used with reference to failure or refusal to obey a lawful order outside the presence of the Court.

corroborating evidence evidence supplementary to that already given and tending to strengthen or confirm it.

counterclaim a claim presented by a defendant in against the plaintiff.

de novo (de no'vo) anew, afresh. A "trial de novo" is the retrial of a case.

declaratory judgment one which declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

default a "default" in an action of law occurs when a party omits to plead within the time allowed or fails to appear at the trial.

default judgment the court may enter judgment against a defendant in his/her absence or in the event they have failed to complete the filing of court ordered documents within a specified time.

directed verdict an instruction by the judge to the jury to return a specific verdict.

discovery a process whereby one party to an action may be informed as to facts known by other parties or witnesses. In Idaho the usual modes of discovery are depositions, interrogatories, requests for production of documents, and requests for admission.

dismissal without prejudice permits the plaintiff to sue again on the same cause of action, while dismissal "with prejudice" bars the right to bring or maintain an action on the same claim or cause.

domicile that place where a person has his true and permanent home. A person may have several residences, but only one domicile.

eminent domain the power to take private property for public use by condemnation

en banc on the bench; all judges of the court sitting together to hear a cause.

enjoin to require a person, by writ of injunction from a court to perform, or to abstain or stop some act.

equitable action an action which may be brought for the purpose of restraining the threatened infliction of wrongs or injuries, and the prevention of threatened illegal action. (Remedies not available at common law).

escheat (es-cheet) an American law, the preferable right of the state to an estate to which no one is able to make a valid claim.

estoppel (es-top'el) a person's own act, or acceptance of facts, which preclude that person from later making claims to the contrary.

et al. an abbreviation for et alli, meaning "and others."

et seq. an abbreviation of et sequentes, or et sequentia, meaning "and the following"

ex parte (ex par'te) by or for one party; done for, in behalf of, or on the application of, one party only.

ex post facto (ex post fak'to) after the fact; an act or fact occurring after some previous act or fact, but which relates back thereto.

fugitive warrant a judge in one state may issue a warrant for the arrest of an individual being held in custody in another state. The fugitive warrant allows law enforcement to travel to that state and take that person into custody for transport back to the issuing state.

garnishment a proceeding whereby property, money or credits of a debtor, in possession of another (the garnishee), are applied to the debts of the debtor.

guardian ad litem (ad li'tum) a person appointed by a court to look after the interests of a child or incompetent whose property or rights are involved in litigation.

habeas corpus (ha'be-as kor' pus) "you have the body." The name given a variety of writs whose object is to bring a person before a court or judge. In most common usage, it is directed to the official or person detaining another, commanding him to produce the body of the prisoner or person detained so the court may determine if such person has been denied his liberty without due process of law.

harmless error in appellate practice, an error committed by a lower court during a trial, but not prejudicial to the rights of the party or the outcome of the case and for which the court will not reverse the judgment.

hearsay evidence not proceeding from the personal knowledge of the witness. It should be noted that the law on hearsay is one of the more complicated areas of the law of evidence with many qualifications and exceptions.

holographic will-a testamentary instrument, will, in the handwriting of the testator. Idaho allows holographic wills; not all states do. The technical requirements for a valid holograph vary from state to state.

hung jury in a criminal trial, a hopelessly deadlocked jury in which neither side is able to prevail.

impeachment of witness an attack on the credibility of a witness by the testimony of other witnesses on evidence.

in camera (in kam'e-ra) in chambers; in private.

indeterminate sentence an indefinite sentence of "not to exceed" so many years, the exact term to be served being afterwards determined by parole authorities within the maximum limits set by the court or by statute.

indictment an accusation in writing found and presented by a grand jury, charging that a person has done some act or been guilty of some omission which, by law, is a crime.

information an accusation for a felony criminal offense which is presented by a prosecuting attorney instead of a grand jury.

infraction minor offenses of the law that are not criminal in nature but rather is a civil public offense punishable by a fine only. Examples of infractions include: speeding, failure to fasten a safety belt .

injunction a mandatory or prohibitive writ issued by a court.

instruction a direction given by the judge to the jury concerning the law of the case.

interlocutory provisional; temporary; not final; refers to orders and decrees of a court.

interrogatories written questions propounded by one party and served on an adversary, who must provide written answers under oath.

intestate one who dies without leaving will.

ISTARS an acronym for Idaho Statewide Trial Court Automated Record System. ISTARS is a computer system used by Idaho's trial courts to assist in the processing of all cases filed at the trial court level.

jurisdiction the power of a court to hear and determine a given class of cases; the power to act over a particular defendant. Referred to as subject matter jurisdiction or personal jurisdiction.

jury, grand a jury of inquiry whose duty is to receive complaints and accusations in criminal cases, hear the evidence and return indictment when they are satisfied that there is a probable cause that a crime was committed and the defendant committed it.

jury, petit the ordinary jury of twelve (or fewer) persons for the trial of a civil or criminal case. So called to distinguish it from the grand jury.

Juvenile Corrections Act (commonly referred to as the JCA)-the statutory law dealing with children charged with violations of the law other than traffic offenses.

libel a method of defamation expressed by print, writing, pictures, or signs. In its most general sense, any publication that is injurious to the reputation of another.

mandamus the name of a writ which issues from a court commanding the performance of a particular act.

manslaughter the unlawful killing of another without malice; may be either voluntary, upon a sudden impulse, or involuntary in the commission of some unlawful act.

misdemeanor offenses less than felonies; generally those punishable by fine or imprisonment otherwise than in the state prison.

mistrial an erroneous or invalid trial, a trial which cannot stand in law because of lack of jurisdiction, wrong drawing of jurors, deadlocked jury or failure of some other fundamental requisite

moot unsettled; undecided. A moot point is one not settled by judicial decisions.

next friend one acting for the benefit of an infant or other person without being regularly appointed as guardian.

no bill this phrase, endorsed by a grand jury on the indictment, is equivalent to "not found" or "not a true bill." It means that in the opinion of the jury, evidence was insufficient to warrant the return of formal charge.

of counsel a phrase commonly applied to counsel employed to assist in the preparation or management of the case, or its presentation on appeal, but who is not the principal of attorney of record.

order to show cause hearing a hearing in which a person is ordered to court to show cause why they did not comply with the order of the court.

peremptory challenge the challenge which the parties may use to reject a certain number of perspective jurors without assigning any reason.

petition in the context of juvenile case processing, the petition is the formal document filed with the court outlining the charges against the juvenile.

pleading the process by which the parties in a suit or action alternately present written statements of their contentions, to narrow the field of controversy.

post conviction relief a court hearing in which a defendant convicted of a crime petitions the court to modify or reduce the sentence imposed by court.

power of attorney an instrument authorizing another to act as one's agent or attorney.

prejudicial error synonymous with "reversible error"; an error which warrants the appellate court to reverse the judgment before it.

preliminary hearing a hearing held in the Magistrate's Division on a felony charge to determine if the defendant should be bound over to the District Court to stand trial. If the magistrate determines that there is probable cause to believe that an offense has been committed and that the defendant committed the offense, the case is then presented to the District Court.

pretrial hearing a court hearing that occurs before trial in which the judge sits down with the parties to the matter to review elements associated with the case. A hearing that attempts to ensure that all proceedings and documents have been completed and efforts to resolve the matter have been exhausted.

preponderance of evidence greater weight of evidence, or evidence which is more credible and convincing to the mind, not the greater number of witnesses.

probable cause sufficient reason to believe a crime has been committed or that certain property is connected with a crime. Probable cause must exist for a law enforcement officer to make an arrest without a warrant, conduct a search without a warrant, or seize property in the belief that the item were evidence of a crime.

probable cause hearing a hearing to determine if there is sufficient evidence to warrant the filing of a charge or to bind a defendant over for trial.

probate the act or process of proving a will, or in general the legal process of settlement of a decedent's estate through the court process.

probation a sentence whereby a defendant is permitted to avoid serving the full sentence under specified conditions.

probation violation a person who has been found guilty or has admitted to committing a crime is often placed on probation by a judge. Typically there are conditions attached to probation that if they are not fulfilled, will result in violation of conditions of probation and may result in a probation being revoked.

pro se representing himself or herself

proximate cause a cause which, in natural or probable sequence, produced the damage complained of. It need not be the only cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes damage.

punitive damages are damages in excess of those required to compensate the plaintiff for the wrong done which are imposed to punish the defendant because of the particularly wanton or willful character or his or her wrongdoing.

quash to vacate; to annul or void

reasonable doubt an accused person is entitled to acquittal if, in the minds of the jury, his guilt has not been proved beyond a "reasonable doubt"; that state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

remanded ordered back to custody, or sent back; e.g., a defendant being remanded to the custody of the sheriff or on appeal being remanded to the lower court.

reply when a case is tried or argued in court, the argument of the plaintiff in answer to that of the defendant.

retained jurisdiction a judge, after sentencing an individual to a correctional institution may retain jurisdiction over that individual, which typically lasts 180 days. At the end of that time, the prisoner is returned to the court where his/her progress is evaluated to determine whether more severe punishment should commence or the original sentence entered by court should be changed

sequestration holding a jury separate and apart from outside contact.

small claims known as the "peoples' court," the small claims court handles disputes between people that involve monetary amounts of less than \$4,000. No jury trials are available in small claims nor are attorneys allowed to represent parties in small claims court.

specific performance a mandatory order in equity. Where damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what he has agreed to do.

stare decisis (sta're de-si'sis)-the doctrine that when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that same principle and apply it to future cases where the facts are substantially the same.

statute of limitations the statutory provisions limiting the amount of time within which a claim must be filed.

stay a stopping or arresting of a judicial proceeding by order of the court.

stipulation an agreement by the opposing parties or attorney pertaining to the proceedings that is binding on the parties to the stipulation.

subpoena a notice or process served upon a witness to compel the witness to appear and give testimony before a court or agency authorized to issue subpoenas.

subpoena duces tecum a notice or process by which the court commands a witness to produce certain documents or records.

summons a court document used to require a person's appearance in Court.

tort an injury or wrong committed, either with or without force, to the person or property of another.

tort Claims Act statutory provisions setting forth the conditions for bringing actions against the state, and other governmental entities and their employees.

trial de novo (de no'vo) a new trial or retrial held in a higher court in which the whole case is heard as if no trial had been held in a lower court.

under advisement if during the course of a hearing, a question is posed that requires the judge to give more thought or further research before making a decision. The judge takes the matter under advisement to review the matter and to render a decision.

unlawful detainer a detention of real estate without the consent of the owner or other person entitled to its possession.

venire-(ve-ni're) technically, a writ summoning persons to court to act as jurors; popularly used as meaning the body of names thus summoned.

venue-(ven'u) the particular county, city or geographical area in which a court with jurisdiction may hear and determine a case.

voir dire (vwor der) to speak the truth. The process by which potential jurors are questioned to determine if they may serve on a jury.

waiver of speedy trial state law requires that a defendant be tried within a specified period of time. A defendant may waive that right to allow the proceeding to continue beyond the speedy trial deadline.

with prejudice the dismissal of an action that prevents further proceedings on the same claim.

withheld judgment a criminal disposition in which a judge grants probation and other conditions deemed appropriate. If the defendant successfully completes the conditions as outlined by the judge, the judge will then dismiss the withheld judgment and the case resulting in the defendant having a clean record.

without prejudice a dismissal "without prejudice" allows a new suit to be brought on the same cause of action.

writ an order issued from a court requiring the performance of a specified act, or giving authority and commission to have it done.

Public Access Terminals

DISTRICT	COUNTY	Public Access Terminal(s)	Location
1	BENEWAH		Deputy Clerks Provide Information
1	BONNER	2 Terminals	1 Clerk's Office -- 1 Court Assistance Office
1	BOUNDARY	1 Terminal	Clerk's Office
1	KOOTENAI	2 Terminals	Court Records Department
1	SHOSHONE	1 Terminal	Clerk's Office -- Second Floor
2	CLEARWATER		Deputy Clerks Provide Information
2	IDAHO		Deputy Clerks Provide Information
2	LATAH	1 Terminal	Court Assistance Office
2	LEWIS		Deputy Clerks Provide Information
2	NEZ PERCE	1 Terminal	Clerk's Office -- Second Floor Main Courthouse
3	ADAMS	1 Terminal	Public Service Counter -- Clerk's Office
3	CANYON	2 Terminals	1 Civil Clerk's Office -- 1 Criminal Office
3	GEM	1 Terminal	First Floor -- Clerk's Office
3	OWYHEE		Deputy Clerks Provide Information
3	PAYETTE	1 Terminal	Clerk's Office
3	WASHINGTON	1 Terminal	Clerk's Office -- main courthouse
4	ADA	5 Terminals	Clerk's Office -- Jefferson St. Courthouse
4	BOISE	1 Terminal	Clerk's Office
4	ELMORE	1 Terminal	Waiting area outside Clerk's Office
4	VALLEY	1 Terminal	Clerk's Office
5	BLAINE	1 Terminal	Clerk's Office
5	CAMAS		Deputy Clerks Provide Information
5	CASSIA	1 Terminal	Court Assistance Office
5	GOODING	1 Terminal	Magistrate Clerk's Office
5	JEROME	1 Terminal	Clerk's Office
5	LINCOLN	1 Terminal	Courtroom machine available
5	MINIDOKA	1 Terminal	District Court Clerk's Office
5	TWIN FALLS	1 Terminal	Public Service Counter -- Clerk's Office
6	BANNOCK	1 Terminal	Clerk's Office -- Room 211
6	BEAR LAKE	1 Terminal	Magistrate Clerk's Office
6	CARIBOU	1 Terminal	Clerk's Counter
6	FRANKLIN	1 Terminal	Clerk's Counter
6	ONEIDA		Deputy Clerks Provide Information
6	POWER	1 Terminal	Court Clerk's Office
7	BINGHAM	1 Terminal	Law Library
7	BONNEVILLE	5 Terminals	Public Information Booth
7	BUTTE		Deputy Clerks Provide Information
7	CLARK	1 Terminal	Clerk's Office
7	CUSTER		Deputy Clerks Provide Information
7	FREMONT	1 Terminal	Law Library (under construction)
7	JEFFERSON	1 Terminal	Clerk's Office
7	LEMHI	1 Terminal	Law Library
7	MADISON	1 Terminal	Law Library - to be relocated
7	TETON		Deputy Clerks Provide Information

Telephone and Fax Directory to County Courthouses

For a listing of telephone and fax numbers for Idaho county courthouses, go to:

<http://www2.state.id.us/judicial/directry.pdf>

A Note on "Privileged Communications" In Court Proceedings

It is generally true that news media cannot be successfully sued for publishing (either in print or by broadcasting) what would otherwise be a defamatory statement, even though the statement may have been made maliciously by the speaker or writer, so long as the statement is brought out in the due course of a judicial proceeding, and is reasonably related to that proceeding. Idaho courts recognize that such communications are "privileged" (meaning that they cannot be used as the basis of a defamation or libel suit). A "judicial proceeding" is not restricted to trials, but includes every proceeding of a judicial nature before a court or official clothed with judicial or quasi judicial power. Reporters who are uncertain about whether this privilege applies to a potentially defamatory statement that they may publish should contact their editors regarding the specific application of the law.